

REMARKS

Claims 1-70 are pending in the application. Claims 1-44 and 54-62 have been withdrawn as being directed to a non-elected invention. Applicant reserves the right to continue the prosecution of the non-elected inventions in one or more separately filed divisional patents without prejudice or disclaimer. Claims 45-53 and 63-70 have been rejected.

The Examiner rejected Claims 45-47, 68, and 70 under 35 U.S.C. § 103 as being obvious over Kaye, U.S. Patent No. 5,390,819 ("the Kaye Patent"). The Examiner also rejected Claims 48-53 under 35 U.S.C. § 103 as being obvious over the Kaye Patent in view of James, U.S. Patent No. 2,415,012 ("the James Patent"). In addition, the Examiner rejected Claims 63-68 under 35 U.S.C. § 103 as being obvious over the Kaye Patent. Applicant respectfully traverses these rejections on the basis of the arguments previously submitted in the Notice of Non-Compliant Amendment and Response to Office Action filed on January 25, 2006, the Response to Office Action filed on October 13, 2006, the Response to Office Action filed on July 3, 2007, and the following, additional arguments in support of patentability, as well as the Declaration of Larry E. Wittmeyer, Jr. filed herewith.

The Examiner maintains that it would have been obvious to use the structured stack of flexible sheets shown in the Kaye Patent as a recreational toy because the stack, when expanded, will provide for recreation to a user. No evidence has been presented to show that repositionable notepads or other adhesive notepads were suggested or promoted for use as a recreational toy prior to the Applicant's invention. Submitted herewith is the Declaration of Larry E. Wittmeyer, Jr., the inventor of the subject invention. Mr. Wittmeyer has over forty years of experience in relation to paper and adhesive products. Mr. Wittmeyer confirms that, to his knowledge, other parties did not use or promote the use of repositionable notepads as a recreational toy. To the

contrary, in the past, the focus of using repositionable notepads was on removing the individual sheets from the notepad for adhesion to other substrates. However, after products embodying the present invention were launched commercially in the marketplace, 3M, a leading manufacturer of repositionable notepads, and Slinky®, the owner of the brand name Slinky® for the conventional, metal/plastic toy, began promoting a Slinky® branded repositionable notepad product. Had this concept been obvious before the Applicant's invention, Slinky® and/or 3M, as well as other competitors, would have sold and promoted the use of repositionable notepads as a recreational toy. They did not do so until after the Applicant's invention and commercial introduction of the Applicant's invention to the public. It is submitted that the introduction of these products only after the Applicant's invention and commercial introduction of the same evidences copying that should be considered as relevant to the obviousness inquiry. *See, e.g., State Contracting & Engineering Corp. v. Condotte America, Inc.*, 346 F.3d 1057, 1069, 68 USPQ2d 1481 (Fed. Cir. 2003) ("The underlying factual inquiries include the scope and content of the prior art; the differences between the claimed invention and the prior art; the level of ordinary skill in the art; and objective evidence of non-obviousness, including commercial success, copying, and long-felt need."); *Allen Archery, Inc. v. Browning Mfg. Co.*, 819 F.2d 1087, 1092, 2 USPQ2d 1490, 1493 (Fed. Cir. 1987) (considering copying, praise, unexpected results, and industry acceptance as indicators of non-obviousness); *Diversitech Corp. v. Century Steps, Inc.*, 850 F.2d 675, 679, 7 USPQ2d 1315, 1319 (Fed. Cir. 1988) (considering copying as an indicator of non-obviousness).

In view of the foregoing remarks and the attached Declaration, it is respectfully submitted that the claims are in condition for allowance and eventual issuance. Such action is respectfully requested. Should the Examiner have any further questions or comments that need be addressed

in order to obtain allowance, he is invited to contact the undersigned attorney at the number listed below.

Acknowledgement of receipt is respectfully requested.

Respectfully submitted,

By: 

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